



SMSF AUDIT SPECIALISTS®

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8th March 2012

Manager,
Financial Services Unit,
Retail Investor Division,
The Treasury,
Langton Crescent,
PARKES ACT 2600

Sent by email to; instalmentwarrantcorpregs@treasury.gov.au

RE: Corporations Amendment Regulations 2012 Submission Proposed Reg 7.1.04H.

Dear Sir,

Please be advised that I am making a public submission and I authorise for this submission to be displayed on the Treasury website for viewing by the public.

I refer to the draft regulation as proposed and I advise that the regulation is primarily for the purpose of regulating advice and the issuance of share instalment warrants – amended section 67 (4a) of the SIS Act 1993 rather than the current Limited Recourse Borrowing Arrangements in section 67A which are primarily focused on non-securities such as property.

I am writing this submission as an Individual and I am not writing this on behalf of any organisation or association.

The Draft Reg is proposing to regulate the fact that a Self Managed Super Fund when entering into a borrowing arrangement (LRBA) must be registered and hold an Australian Financial Services Licence (AFSL). This is incorrect and should not be the case. When one looks at the current regulation 911A(2)(j) of the Corporations Act it can be clearly seen that a Self Managed Super Fund (SMSF) is exempted from having to hold an AFSL.



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I propose that once again the same exemption should be clearly applied again in this case if the SMSF is involved in the setting up and borrowing of funds to have an LRBA situation exist in their SMSF and a Bare Trust. It is important that the Trustee of the Bare Trust also holds an AFSL exemption

The regulation as it is currently drafted appears to insist that the first person or persons or Company that is involved in this type of transaction will have to have an AFSL. In this case it is the bare trustee and the SMSF. This is a very ridiculous situation to be putting the end user and consumer in. The cost of doing business will increase every substantially for the consumer and end user.

Should this occur it possibly will create problems for the lender, the banks, or private finance companies as this may mean that the lender may have to be involved in the issuing of a PDS etc.

I also advise that the regulation should be much clearer in what type of product that is supposed to be. It is all right for this to be classified as a derivative and or security if the product may be shares or some or kind of margin loan. In the case of an SMSF there should perhaps be a specific product type created such as SMSF Product that will and may provide specific circumstance for Accountants and SMSF's having for regards to the proposed new rules to be released by the Minister for Financial Services and this in turn may allow Accountants who are to loose the Accountants Exemption to be involved in this type of transaction to be of assistance to their clients as they are currently allowed to be.

It appears to me that there has not been sufficient clarity and liaison in this matter with other Departments and there should be far better liaison. My proposed new product mentioned above should only have exemption from having an AFSL if it is for use in an SMSF and is only property. If some other type of investment is to be used in a bare trust and or warrant type product then this should be licensed as is currently been proposed to be.

It should be noted by Treasury and the Minister that there are so many more and additional regulations and obstacles currently been put into place for SMSF's and other investments that the problem is that the consumer is been over and more heavily protected and the cost to the consumer is been increased several times as a result of this over regulation. Life for the consumer should be made slightly easier and not overregulated – which is the purpose of Chapter 7 of the Corporations Act 2001.

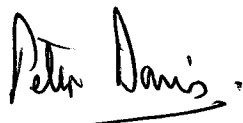


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Should Treasury and or the Minister wish to further discuss this matter then I would be pleased to be of assistance in further discussions. I take this opportunity to advise Treasury that I am a Registered Tax Agent, Specialist SMSF Advisor and Specialist SMSF Auditor and an Authorised representative of a licensed financial advisor.

Yours faithfully.



Peter Davis

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